State of Alaska
Department of Natural Resources
Division of Forestry
Coastal Region
Mat-Su Area

Forest Land Use Plan/Preliminary Decision
For the
Sunset/Bench
Timber Sale

SC-2907M

Winter 2009

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I. INTRODUCTION

A. Purpose

The purpose of this Forest Land Use Plan (FLUP) is to provide sufficient information for reviewers to ensure that the best interest of the state will be served by the Department of Natural Resources (DNR) Division of Forestry (DOF), offering an estimated total gross volume of 1,896 cunits of birch and white spruce for sale. (A cunit equals 100 cubic feet of solid wood.) This volume is configured in 2 different harvest units that compose a total of 94 acres. The total estimated volume for these units consists of **570 cords** (520 cunits) of paper birch logs and **135 thousand board feet** (mbf) of white spruce logs. The harvest units may be sold as separate sales or sold in combination with each other under the provisions of AS 38.05.120 [Disposal Procedure]. If no qualified bid is received within the time specified for a sale, the Division of Forestry may offer the timber for purchase over-the-counter for not less than the advertised minimum bid without further notice. Approximately three-quarters of one mile of winter roads will be constructed for this sale. The contract period will last three years.

The public is invited to comment on this timber sale with regards to the best interest finding (AS 38.05.035, Powers and Duties of the Director). Comments should be mailed to the Area Forester, Alaska Division of Forestry, 101 Airport Road, Palmer, Alaska, 99645. Comments must be received at the Division of Forestry office no later than **April 21, 2009** in order to be considered in the final decision of whether the sale will be held in whole or in part. To be eligible to appeal the final decision a person must have provided written comment by **April 21, 2009**.

B. Five-Year Sale Schedule

The footprint these proposed sales occupy has been shown as a potential sale area in the previous Five-Year Schedule of Timber Sales (FYSTS) for Calendar Years 2007-2011 as required by AS 38.05.113 (Five Year Sale Schedule).

C. Location

The legal description of this proposed action is as follows: Section 10, T18N, R2W in the Seward Meridian. The sale area is shown on the attached map.

Meadow Lakes is the nearest community, located approximately 3 miles south of the sale area. Wasilla is the nearest incorporated town, lying 5 miles to the southeast. This area is located on the United States Geological Survey 1:63,360 Quadrangle map titled Anchorage C-8. The tract is accessed by driving west on Shrock Road from the Shrock Road/Church Road intersection, then west on Sunrise Road, turning right on Sunset Road, then turning left on a section line easement running north.

The regional Native corporation is Cook Inlet Regional Inc.

D. Title, Classification and Other Active or Pending Interests

The sale area is within Management Subunit 3B of the *Deception Creek Land Use Plan* and DC 3b of the *Susitna Forest Guidelines.*. Subunit 3B is designated as co-primary use for

Forestry/Wildlife habitat, and Watershed in the *Deception Creek Land Use Plan*. This land use designation and the management intent specifically allow for timber harvest. The *Deception Creek Land Use Plan*, referring to Subunits 3A and 3B, states: "These subunits will be managed primarily for their forestry, wildlife, and watershed values. More specifically, the subunits will be managed for hardwood (deciduous) and softwood markets and as winter range for moose. Timber harvest must be designed and timed to meet both goals." Both subunits are part of the watershed for the city of Houston. Neither harvest unit is within one-half mile of any identified potential water source for the City of Houston.

E. Planning Framework

The decision to offer these sales was based on a long series of planning decisions, made with public and agency input every step of the way. This document, the Forest Land Use Plan (FLUP) for the timber sales, is one of the final steps in this long planning process. The planning for where timber harvest is appropriate, and where it is not appropriate, is done at a much broader scale than the FLUP. The framework for how management decisions are made for timber sales in the Susitna Valley is as follows:

1. Area plans, management plans, and land use plans (in this case, the *Deception Creek Land Use Plan*) determine where timber harvesting is allowed.
2. The *Susitna Forestry Guidelines* and the Forest Resources and Practices Act and Regulations determine how timber will be managed within areas where harvesting is allowed by the area plan.
3. The Five-Year Schedule of Timber Sales proposes when timber sales will be offered, and approximately where and how big each sale will be.
4. Next, a Forest Land Use Plan is written for each individual sale, which contains more detailed decisions about each sale.

1. The *Willow Sub-Basin Area Plan* (October 1982*)* and the *Deception Creek Land Use Plan* are the broad-scale analyses of the types of land uses appropriate on different areas of state land in the southern Matanuska-Susitna Borough. The *Willow Sub-Basin Area Plan* covers approximately 750,000 acres, and although the Deception Creek area is within the bounds of the Willow Sub-Basin Area, it is not covered within the plan itself. The Deception Creek area, at the time the Willow Sub-Basin Area Plan was developed, was dedicated for use as the new capital site. The *Deception Creek Land Use Plan* (October 1989) amends the Willow Sub-basin Area Plan in the Deception Creek Unit. The management plan directs state land management by the DNR, covering approximately 65,699 acres of patented state lands.

Both the area plan and the management plan processes were the means to openly review resource information and public concerns prior to making long-range decisions about public land management. The planning processes determined how the complete range of uses would be accommodated in the proposed sale area, including opportunities for forestry, as well as protecting fish and wildlife habitat, opportunities for recreation, and the whole range of other uses.

Over ninety percent of the public lands in the Willow Sub-Basin planning area are retained in public ownership and managed for multiple use, including protection of fish and wildlife habitat

and provisions for hunting, fishing, and other wildlife use opportunities. Forestry is an allowed use on only 15 percent of the planning area: about 110,000 acres of the total 755,000 acres. Habitat protection and management is a primary use on approximately 50 percent of the public lands within the planning area (345,000 acres of state land and 26,000 acres of borough land, for a total of about 371,000 acres).

For these harvest units, the decision to allow timber harvest in the area was made in both the area plan and the management plan. As noted above, the sale area is within Subunit 3B of the *Deception Creek Land Use Plan*. Subunit 3B is designated as co-primary use for Forestry/Water Resource/Wildlife Habitat. This land use designation and the management intent specifically allow for timber harvest. The *Deception Creek Land Use Plan* identifies certain areas within the planning area where timber harvesting is not allowed: specifically, within 100 feet of anadromous and high value fish waterbodies and within 200 feet of Deception Creek itself.

2. Forestry activities in the Deception Creek area are also governed by the *Susitna Forestry Guidelines* (*SFG*) (December 1991), a document developed through a second broad-scale public planning process. The *SFG* establishes specific guidelines for forestry lands in the Susitna Valley. It was designed to provide a balanced, sustained yield of public benefits, including providing wood for personal and commercial use, supporting tourism and recreation opportunities, protecting and enhancing fish and wildlife habitat, and protecting air, land and water quality. The *SFG* states that "to provide wood, fish, game, recreation, and other benefits, state-owned forest lands will include both natural ecosystems and actively-managed forests."

The *SFG* provides for harvest, while at the same time protecting other resources and uses. For example, even in lands classified to allow forestry activities, timber harvest is prohibited near lakes and most wetlands and streams, along the Iditarod Trail, near bald eagle nesting sites, and recreation sites.

The proposed timber sale is within *SFG* unit DC 3B. The *SFG* allows timber harvest in the sale area, and includes guidelines for timber harvest methods, reforestation, and other aspects of the harvest activities. The Forest Resources and Practices Act and Regulations also guide timber harvest activities in the sale area.

3. Next, the Division of Forestry prepares a Five-Year Schedule of Timber Sales (FYSTS) every other year. The FYSTS gives the public, timber industry, and other agencies an overview of the division's plans for timber sales. They summarize information on proposed timber harvest areas, timber sale access, and reforestation plans. Five-Year Schedules are subject to public and agency review. The review helps identify issues that must be addressed in detailed timber sale planning. After review and revision, DNR uses the schedules to decide how and where to proceed with timber sale planning.

The sale area was included in the DOF's Mat-Su Southwest Area and Kenai-Kodiak Area Five Year Schedule of Timber Sales, 2007-2011. The Schedule was published in July 2007 and noticed for public comment in the *Frontiersman* and the *Anchorage Daily News* on July 17. The notice was posted in all Mat-Su post offices and on the State of Alaska Public Notice

and the DOF web sites. The notice was also sent to agencies, Mat-Su community councils, tribal councils, Native corporations, planning commissions, Legislative offices, conservation groups, small mill operators, timber industry representatives, and private citizens. The schedule and maps are available for download from the DOF's web site. Public comments were accepted until August 16, 2007, but comments received after August 16, have been kept in the file. Thirty-three comments were received. These public comments were used to identify issues that would be addressed in the Forest Land Use Plans.

4. Finally, the Forest Land Use Plan (FLUP) is prepared. The FLUP presents detailed information on the location, access, harvest methods, duration, and proposed reforestation for each sale. The public is asked to comment at this stage, as well. By getting the best available data, combined with a series of public processes that helps us gather information from the public and other agencies, we make well-informed decisions about uses of resources on state land.

F. Objectives

1. **Meet mandate.** To follow one of DNR's mandates to encourage the development of the state's renewable resources, making them available for maximum use consistent with the public interest. Sustain and promote a healthy**,** long-term timber industry in the state, by providing a secure source of timber for harvest that produces raw materials for local manufacturing plants when practical while protecting other resources such as fish and wildlife.
2. **Economic benefits.** To help the state's and borough's economies by providing royalties to the state from stumpage receipts, and adding to the state's economy through wages, purchases, jobs and business.
3. **Proactive forest management.** To improve forest growth and vigor by harvesting and replacing mature birch stands with new healthy stands of re-growth, while protecting and maintaining other resource values. The actions authorized under this decision will adhere to multiple-use management.
4. **Habitat objectives.** To provide a mosaic of forest stand ages for a variety of wildlife species that live in the area, including some early-successional stages for wildlife that depend on habitat diversity including increased winter moose browse away from transportation corridors for public safety, and for game bird habitat including ruffed grouse.

II. LEGAL AUTHORITY

The Division is taking this action under the authority of AS 38.05.035(e) (Best Interest Finding); AS 38.05.110-120; 11 AAC 71 (Timber Sale Statutes and Regulations); AS 41.17.010-.950 and 11 AAC 95 (Forest Resources and Practices Statutes and Regulations).

III. ADMINISTRATIVE RECORD

The DOF will maintain an administrative record regarding the decision of whether or not to offer timber within the Sunset/Bench Timber Sale. This record will be maintained at the Mat-Su Area Office filed as SC-2907M.

IV. DISCUSSION OF ISSUES

A. Physical characteristics of the sale area

1. Topography. This proposed sale is situated on uplands approximately 500-600 feet above sea level. The terrain generally slopes to the north at three to seven percent, although some short 30 to 60 percent slopes occur in rolling topography. There are no known natural hazards occurring in this area.

2. Water bodies. The *Atlas to the Catalog of Waters Important for Spawning, Rearing, and Migration of Anadromous Fishes* was used as a reference guide to indicate the potential for fish habitat issues in the timber sale area. Fast Creek, Cataloged Stream 247-41-10100-2295 (Type II-D), flows out of a muskeg to the north and north-west and is, at its closest extent, 1500 feet to the west of the sale area. It is, at its closest extent, 0.37 miles away from the sale area and is cataloged as supporting rearing Coho salmon. It flows into the Little Susitna River to the southwest.

The timber sales in the plan area are anticipated to have a minimal impact on water quality, due to the location of the units and the topography in relation to the significant surface water bodies. The topography within the units is generally rolling with short steeper pitches of elevation loss to adjacent low lying areas that are typically muskeg or are wet areas growing black spruce. The sale area presents no obstacles that would prevent implementation of the best management practices of the FRPA for maintaining the water quality of all drainages in the sale area during proposed operations. The DOF will mandate best management practices of the FRPA to maintain the water quality of the drainages in the sale area. The harvest units within the sale area will be logged during the winter during times of good ground support (frozen or covered with snow). The winter conditions will practically eliminate sediment accumulation and transport potential during operations.

Information from field inspections, compliance monitoring, and the state ACWA (Alaska Clean Water Actions) database indicate that the FRPA is effective in protecting water quality. The annual report from the Department of Environmental Conservation (DEC) on the effectiveness of FRPA concluded that, "when properly implemented, the BMPs are effective at protecting water quality." No streams have been identified or listed for violation of water quality standards as a result of forest operations subject to the FRPA best management practices.

The Division of Forestry routinely monitors implementation of the best management practices established by the FRPA and its regulations. Compliance in Central Alaska is high—the overall score for compliance in 2003 to 2007 was 4.4 out of a possible score of 5.0 across a wide range of BMPs. When the division identifies BMPs for which implementation is inadequate, we address the problems through operator training and enforcement actions.

3. Stand Conditions. The stand type predominant in the sale area is a result of wildfires that burned through the area approximately 80 years ago. The type originated after the wildfires and predominates in the lower elevations to about 850 feet elevation. This type consists of even-aged paper birch 70 to 80 years of age, with scattered uneven-aged white spruce varying in age from seedlings to mature trees approximately 80 years of age. Merchantable birch timber ranges from 6 to 25" diameter at breast height (dbh) with an estimated average of 15" dbh. The average **birch volume** per acre in this type for both units was approximately **5.5 cunits per acre (6 cords/acre)**. **White spruce timber volume** per acre was estimated at **1,436 board feet per acre.**

The timber in this type is fully mature for birch saw timber. All units are fully stocked and mature, and would also be able to supply timber for a fiber, chip, or fuel wood sale. Generally the units are closed canopy with some undergrowth. Few indicators of disease or insect problems are evident at this stage of development.

There is an endemic population of spruce bark beetle in the area, but there has been no spruce bark beetle infestation, and little mortality has been noted in the sale area. The spruce within the sale area is fully mature with some defect.

It can be expected that within the next 10 years these units will begin to thin, succumbing to attacks from fungi and insects, and to the effects of snow load and wind damage. Further maturing of these stands will result in significantly accelerated defect. Experience has shown that additional growth will not produce a useful net increase in volume for the stand.

The understory vegetation is composed mainly of dwarf dogwood (bunch berry), club moss, high bush and low bush cranberry, and menzesia. The type contains occasional grass, alder, willow, rose, blueberry, and devils club.

4. Silvics of birch trees. White or Paper Birch (*Betula papyrifera*) is a medium-sized, fast-growing tree that grows best on well-drained, cool, moist soils (Safford, 1990). Birch can grow on drier or wetter sites but will not achieve the growth rates found on more optimal sites. Birch is considered a short-lived tree, and matures at 60 to 70 years old. It rarely lives longer than 140 to 200 years.

Four decay causing pathogens have been identified in the paper birch: *Phellimus ignirius, Poria obliqua, Armillaria sop., and Pholiota spp*. Surveys of these pathogens were conducted in Southcentral Alaska from 1996 to 2001. In general, the amount of stem, butt, and root decay was low in stands less than 50 years of age. Moderate decay was apparent in approximately half the trees in stands over 70 years of

age, while nearly every tree contained extensive decay in stands over 100 years of age.

Birch commonly colonizes disturbed sites found after logging, fires, and windstorms. Scarification techniques are used to mimic or augment these disturbances and ensure adequate stocking levels to meet management and regulatory goals.

White birch normally produces seed at about age 15, with the optimum seed producing age between 40 to 70 years old (Safford, 1990). Birches produce seed every year and produce abundant seed crops every two to three years. Seeds are light, small, winged and average 1.4 million seeds per pound (Safford, 1990). Because of their size, seeds are easily dispersed by the wind and across the snow. Seeds are dispersed throughout the fall and winter with the majority of seed falling during the fall months.

Mineral soil provides the best moisture and temperature medium for the establishment and early growth of seedlings (Safford, 1983). Provided that the organic material is preserved, treatments such as scarification, disking, and light burning help provide the best seedbeds for establishing white birch (Safford, 1983).

In Zasada's (1978) study of Alaskan birch regeneration, scarified sites three years after clear-cutting regenerated abundantly, with 700,000 seedlings per acre. Unscarified seedbeds showed less consistent stocking, with only 20,000 seedlings per acre. The seedlings in the scarified sites averaged 11 inches in height while the untreated sites averaged 2 inches (Zasada, 1977). The data is not consistent with other findings in the northeast which showed birch germinated better on scarified sites but grew better on the untreated sites. The difference has been suggested to be due to competition of herbaceous and other vegetation on the untreated sites in Alaska (Safford, 1990).

Blue-joint reed-grass (*Calamagrostis canadensis*) in Southcentral Alaska is a serious competitor of both spruce and birch regeneration. Its rhizomes and seeds quickly colonize sites. The grass robs seedlings of needed nutrients and light. The dead grass also will smother the seedlings, and with the winter snows, may break or severely damage the young, weak plants. Scarification retards grass colonization and allows the seedlings to become established and compete with the grass.

Collins, in his study of 96 selectively cut and clear-cut sites, found that clearcuts were much more successful than selectively harvested timber in limiting the growth of blue-joint reed-grass. Grass cover was greatly increased in selectively cut sites, which limited hardwood growth to areas where the over-story was relatively open and mineral soil was present, for example, upturned root-wads or haul roads. Collins' survey found that complete or nearly complete over-story removal, followed by scarification, were most favorable to the establishment of early successional hardwood forest.

B. Current Land Use

The land located ¼ mile east and 1/2 mile to the south of the timber sale area is owned by several private property owners. Bench Lake is located 1 ½ miles to the west. Current land use includes hunting, fishing (Bench Lake), berry picking, ATV's, snowmobiling, etc.

C. Wildlife habitat

Numerous wildlife species are present within the planning area. These species include: moose, black and brown bear, spruce grouse and ruffed grouse, ptarmigan, fur-bearing animals, and various birds. Unit size, shape, and position were designed to consider the needs of wildlife common to the area. Division of Forestry staff worked with staff from the Alaska Department of Fish and Game (ADFG) to design harvests that will benefit wildlife. Units comply with design considerations specified in the *SFG* for wildlife. Silvicultural methods were designed to regenerate cut units to vigorously growing forests.

Clumped snags will be retained to provide wildlife habitat for cavity-nesting birds, woodpeckers, small mammals, and other species requiring perching habitat. Residual shrub communities such as alder, devil's club, and vigorously growing young willow will be retained for wildlife habitat and protected from scarification.

Birch, the primary species present within this timber harvest area, is important not only for the timber industry, but also as browse for mammals such as beaver, moose, snowshoe hares and porcupines. These herbivores are not only dependent on young hardwoods (early successional stage) for food, but the animals themselves are, in turn, major food sources for predators (Collins, 1996).

In Southcentral Alaska, the most significant factor promoting the maintenance of early successional vegetation has been fire. Fire suppression for the last few decades has severely reduced this mode of hardwood production, and as a result, has changed the diversity and productivity of the boreal habitats and their wildlife (Collins, 1996). Reduction of over-story and ground covers by logging or land clearing can mimic the natural disturbances which stimulate hardwood growth (Collins, 1996), providing more browse to wood-eating mammals.

By mimicking the fire regime of the past, the harvest will create more forest diversity, leaving an older, late successional forest with openings created by the cutting units. The early successional wildlife species such as moose will benefit from the disturbance and subsequent browse, while buffers and leave areas will continue to support species adapted to the late successional forest types. Buffers will also act as travel corridors and provide cover for wildlife (Collins, ADFG, pers. comm.).

Scarification will be performed in each of the timber sale units to promote the germination and growth of hardwoods, including birch, aspen, and willow. Scarification means exposing mineral soil to promote the germination and growth of hardwoods. (For more information about scarification, see the following sections of this document: A.4. Silvics of birch trees and J. Regeneration.) Moose browse will be improved by regenerating hardwoods as a result of the mechanical scarification required as part of this timber sale. It is anticipated that this timber harvest and site preparation project will provide approximately 94 acres of accessible moose

browse in the form of regenerating hardwood forest vegetation. The regenerating hardwoods will provide moose browse until they grow up beyond the ability of moose to successfully reach it.

Units were designed and laid out with uneven edges to benefit wildlife, taking into account topography and merchantable timber. Within the sale area, there are no Class I or Class II wetlands (wetlands larger than 40 acres). See section K. Harvest Methods for specifics on the timber harvest.

This proposed harvest is located in Subunit 3b of the *Deception Creek Land Use Plan*. The total area of state land in the entire Deception Creek planning area is 65,700 acres. This timber sale plan proposes to harvest less than 40% (31% total including other and historic harvesting in Section 10 see map) of the available original timber typed acreage available for harvest on state land in Section 10. Two previous timber sales occurred in the past in the area (Section 10), and no other harvesting is planned for the immediate future. Harvesting activities may cause a temporary displacement of some individual wildlife species. However, the sale, with its 330 foot timber sale unit buffer strips between units, is not expected to cause significant negative impacts on the wildlife populations in the area.

Species of concern

DOF consulted the Alaska Division of Wildlife Conservation's endangered and threatened species list. None of those species have ranges that are included in the sale area. The Division of Wildlife Conservation does list the following species as "species of special concern":

Northern Goshawk
American and Artic Peregrine Falcon
Spectacled Eider
Steller's Eider
Aleutian Canada Goose
Olive-sided Flycatcher
Gray-cheeked thrush
Townsend's warbler
Blackpoll warbler
Brown Bear, Kenai Peninsula population
Steller Sea Lion
Harbor seal
Beluga whale Cook Inlet population
Bowhead whale
Sea Otters
Chinook salmon, Snake River population

Four Species of Special Concern have ranges which include the sale area. Peregrine Falcons nest throughout interior Alaska, especially on cliffs along rivers and near lakes. The use of DDT was the single largest contributor to the decline of these two species. The reduction in use of DDT and the protection of nesting sites has resulted in a population rebound. This sale area

does not have optimal nesting sites and should not significantly impact peregrines. Should nests be found in the sale area, ADFG biologists will be advised, and DOF will implement any protective measures that may be required.

The Olive-sided Flycatcher also has a summer range overlapping the sale area. This migratory bird nests in coniferous forests and is associated with open areas within the forest including logged areas. Biologists are mostly concerned with the dwindling winter habitat in the Andean valleys of South America. Although the sale area has some larger concentrations of mature spruce, it is predominately a birch forest and would therefore not be prime habitat for these species and, if observed, would be incidental.

Like the flycatcher, the Gray-cheeked thrush and the Townsend's and Blackpoll warblers are migratory species commonly found in coniferous forests. The sale area is predominately a birch forest and would therefore not be prime habitat for these species.

Moose

The sale area is used by moose as a wintering area and as a migration corridor during the spring and fall.

The *SFG* identifies moose winter concentration areas as important to consider when planning harvesting schedules, and states that ADFG must identify those areas before a timber sale is offered. ADFG's Wildlife Conservation Division confirmed that the mature birch forests planned for harvest are not the ideal habitat for wintering moose. Birch stands provide little thermal cover for moose, and older birch stands provide little browse. By scarifying the harvested sites and promoting birch regeneration, the timber harvest will provide the much-needed browse currently lacking in the older stands. Spruce, both white and black, provide much better thermal cover and are more likely to be found in the adjacent riparian and wetland areas that will not be harvested. Wetland buffers also are a source of willow browse. The mosaic of regenerating birch browse, adjacent leave areas between harvest units, and the riparian and wetland buffers will create much better conditions for wintering moose than the conditions that currently exist.

Marten

The *SFG* notes marten habitat as important to consider, and in areas that ADFG identifies as having important marten populations, slash piles that will protrude through the snow are to be left on the ground. However, the older birch forest in the sale area is not the type of habitat frequently used by marten. According to the ADFG's Division of Wildlife Conservation, coniferous forests are better suited for marten habitat.

Eagles

Based on existing U.S. Fish and Wildlife Service eagle nest tree maps and field observations, there are no known eagle nest trees in the sale area. Should an eagle nest tree be discovered in the sale area, DOF will notify the U.S. Fish and Wildlife Service with the location of the nest tree. The eagle nest tree will be marked on the ground and a 330 foot no-harvest radius will be established to protect the nest tree.

Hunting

Hunting pressure in the immediate area should not increase, as access to the area should not be increased due to the number of ORV trails already resident in the sale area, and higher moose densities because of the added browse. The Alaska Department of Fish and Game is responsible for setting hunting regulations, including restricting hunting areas.

D. Subsistence

The timber sale area has not been designated as a subsistence zone. However, the following subsistence uses may occur on lands in state ownership: fishing, trapping, hunting and gathering of berries. This action is anticipated to have no significant deleterious effects on the above activities. This sale has been designed to harvest timber and scarify the units to expose mineral soil for forest regeneration. It is expected that properly applied scarification as site preparation required in the contract will provide moose browse in the form of regenerating early successional stages of forest re-growth. In so providing new forest growth this project is planned to increase subsistence opportunity in the form of additional and at least healthier moose for local residents.

E. Recreation

Current recreational activities in the area are associated with hunting in the fall and spring, and snowmobiling in the winter. Several off-road vehicle (ORV) trails made by hunters and other users crisscross the area. Fishing is a popular year-round activity at Bench Lake, 1.5 miles to the west (Deception Creek Subunit 4).

The DOF has designed the individual units and chosen harvest methods that will create irregular patches of younger forest and enhance the diversity of the area. By so doing, this younger forest will enhance the habitat for early successional species such as grouse and moose and increase hunting opportunities.

The timber sales in the area are expected to result in no adverse long term changes to recreational or tourism use of the area. For safety reasons, harvest activities will temporarily restrict or modify some of the traditional access routes to the area while actual harvest operations are ongoing. The restrictions will be short in nature and be limited to the areas of operation. However, other areas within the sale area and adjacent state land will continue to be fully accessible.

F. Scenic resources

Visual impact from the sale will be nonexistent from the Parks Highway or the closest major roadway, Pittman Road. The closest harvest unit will be over 5 miles from the Parks Highway and 1 mile away from Pittman Road. Furthermore, the harvest units were laid out with uneven edges to benefit wildlife, which will make the harvest areas look like natural muskegs and meadows from a distance.

The sale will be visible from the air. Again, the harvest units were laid out with uneven edges to benefit wildlife, which will make the harvest areas look more natural from the air. Some negative effects may occur to the users of the Sunrise/Sunset Roads and Shrock/Church Roads during operations due to the added traffic on the road. However, the increased traffic will be short in duration.

G. Cultural resources

The Office of History and Archaeology and the State Historic Preservation Office (SHPO) reviews each Five-Year Schedule of Timber Sales and each Forest Land Use Plan for possible impacts to cultural resources. There are no known cultural or historic sites within the sale area. Areas identified as historic, archaeological, or paleontological sites are protected as outlined in the Deception Creek Land Use Plan. During the course of activities associated with this timber sale, cultural and/or paleontological resources may be inadvertently discovered. Should such a discovery occur, the site shall be protected from any disturbance, and DOF will contact SHPO and the Mat-Su Borough's Cultural Resources Specialist immediately so that compliance with state laws governing cultural resources may begin.

Under the Alaska Historic Preservation Act (41.35.200), all burials on state land are protected. If burials or human remains are found, all land-altering activities that would disturb the burial or remains shall cease and measures will be taken to protect it in place. The Office of History and Archaeology and a law enforcement officer will be notified immediately to ensure that proper procedures for dealing with human remains are followed.

H. Sustained yield and allowable cut

The Alaska Forest Resources and Practices Act [AS 41.17.060 (c)] and Article VIII Sec. 4 of the State Constitution require that state forest land be managed on a sustained yield basis. Sustained yield is defined in the Alaska Forest Resources and Practices Act [AS 41.17.950(15)]:

> "Sustained Yield" means the achievement and maintenance in perpetuity of a high level of annual or regular periodic output of the various renewable resources of forest land and water without significant impairment of the productivity of the land and water, but does not require that timber be harvested in a non-declining yield basis over a rotation period.

The Annual Allowable Cut (AAC) is the amount that can be harvested from forest land managed for forestry purposes in a year under a sustained yield management. The AAC in the Mat-Su Area is based on a five year average as mandated by the *SFG*. This sale complies with sustained yield/allowable cut principles outlined in the Mat-Su Southwest Area and Kenai-Kodiak Area Five Year Schedule of Timber Sales, 2007-2011. By law, the state must manage timber for sustained yield. The annual allowable cut that is sustainable in this area is set by the Susitna Forestry Guidelines at 880-930 thousand cubic feet (Mcf) per year. State harvests in any five-year period must be no greater than five times the annual allowable cut. Because sales in the last four years have been far below the annual allowable cut, the remaining allowable cut in FY08 is 3,542 to 3,792 thousand cubic feet. The proposed sales contain 196.6 thousand cubic feet, well within the allowable cut.

AS 41.17.060(c)(4) states that "timber harvesting is limited to areas where data and information demonstrate that natural or artificial reforestation techniques will result in the production of a sustained yield of merchantable timber from that area." The DOF is committed to reforestation and a sustained yield of timber, fish and wildlife. The existing forest, the quality of timber in the

harvest unit within the proposed sale area, and results from past timber sales in the Susitna Valley indicate that the area is capable of regenerating and supporting a sustained yield of merchantable timber and fish and wildlife. Please see the Regeneration section, below, for information about how this harvest has been designed to ensure adequate regeneration.

I. Regeneration

Birch seedlings establish mainly from seed-fall and prompt germination on mineral soil, and to a lesser degree, by stump sprouting. Mineral soil significantly helps birch seed germination and seedling survival. Nearly full sunlight is required to sustain growth and encourage successful birch stand establishment. Abundant birch seed is available every year or two.

Birch stands usually regenerate after wildfire kills the over-story of mature birch and spruce. Fire opens the site to nearly full sunlight, exposes mineral soil to seed-fall from adjacent live birch, and allows birch stumps to sprout, where fire has killed off the above-ground tree but has not entirely killed the root system.

Regeneration of white spruce occurs only from seeds. White spruce trees generally produce some level of a seed crop every three to five years and large seed crops every five to seven years. White spruce seeds germinate best on dead and down decaying trees as well as on decaying stumps and on mineral soil. Site scarification that exposes mineral soil is generally successful at producing an even-aged stand of white spruce. However, birch may reseed naturally in the scarified area, and may become the predominant forest stand tree for many years, because birch grows initially faster than white spruce. White spruce trees are shade tolerant and do not need full sunlight to grow. Over time, the combination of birch and spruce will result in the establishment and dominance of naturally occurring, uneven-aged white spruce trees in a stand. See section A.4. Silvics of birch trees, for more information on birch regeneration.

It is generally accepted that the nutritious parts of principal tree or tall shrub species grow out of reach of moose within 20 years. If not topped by browsing or other mechanical means, the critical height may be reached at 9 or 10 years of age (Collins, 1996). Because there will be enough acreage to spread the browsing out over a large area, no problems with over browsing are anticipated. Collins (1996) noted that the availability of browse may last for a shorter time if the tree's height growth is not retarded by browsing or other damage. He used the abandoned Point Mackenzie Agricultural Project as an example where the old fields reforested in hardwoods and produced excess browse relative to the moose population. The young hardwoods were lightly browsed and quickly outgrew the browse line. Collins and Schwartz, in their (1998) management recommendations, state that "to enhance early successional moose habitat in hardwood and spruce-hardwood stands in Alaska," increased regeneration of hardwood will "lessen the probability that individual hardwoods will be damaged or stunted by browsing."

Scarification will be done on the harvest units to the standards set in the *Susitna Forestry Guidelines* to ensure regeneration that meets the reforestation standards in the Alaska Forest Resources and Practices Regulations [11 AAC 95.375 - .390]. According to the *Susitna Forestry Guidelines*, mineral soil must be exposed on at least 50% of the harvested area.

Areas should be scarified no later than two growing seasons following completion of harvest to minimize grass invasion. Mineral soil patches should be exposed uniformly over the harvested area to encourage uniform distribution of trees. Mineral soil patches should be as large as possible.

J. Harvest methods

Harvest units. The sale area consists of 2 cutting units, with one at 49 acres, and the other at 45 acres. The proposed units have been buffered between themselves with 330 foot no-cut areas as required by the *SFG*. The *SFG* also limits cutting openings: "Cutting openings generally shall be no wider than approximately 660 feet to allow access to cover for bears and moose and to encourage full utilization of browse." Clear-cut harvest areas wider than 660 feet will be mitigated with residual islands of dense cover, as required in the *SFG*. The preferred harvest method for this timber sale is the ***modified seed tree cut*** and this method does not require islands of timber for cover since that is already provided by the residual timber left in each unit. Harvest methods follow guidelines in the *SFG* and the Forest Resources and Practices Act and Regulations.

1. Method of harvest

The harvest planned for the Sunset/Bench Timber Sale is a ***modified seed tree cut*** and is commonly used in older growth Mat-Su birch stands to provide seed source, near full sunlight and a light forest cover. Limiting the amount of sunlight on a scarified forest floor has been found to limit new forest escapement in the presence of winter moose browsing. In order to successfully regenerate the forest, it is not acceptable to encourage complete utilization of birch regeneration to moose browse. The *SFG* definition for a seed-tree harvest is:

> "A harvesting system in which most trees are removed from a stand and openings are created. Openings are similar in size to clearcuts but about 5-10 of the best mature trees are left standing on each acre to provide a good seed source for forest regeneration."

The *modified seed tree cut* employed in this harvest will leave or retain 2 to 4 mature birch trees per acre, all the birch trees less than six inches dbh, all spruce less than 10" dbh and approximately two snags/acre for wildlife and seed source. The residual trees left standing will be protected from damage during harvest operations as much as possible. Aspen and willow within both units will be cut incidental to the timber harvest to encourage prolific regeneration from root and stump sprouts for moose browse, and habitat regeneration.

A mature tree, for the purposes of regeneration, is a tree that is capable of producing seed. Birch trees from 4 to 6 inches dbh are mature trees. White birch normally produces seed at about age 15, with the optimum seed producing age between 40 to 70 years old (Safford *et al*., 1990). White birch in the 4- and 5-inch size classes fall within the optimum seed-producing range of ages, especially when growing within an older and taller stand. According to estimates done during the layout and reconnaissance of the area, the birch trees less than six inches dbh will number

approximately 5-10 mature seed-producing trees on each acre, so the outcome will be very similar to the seed-tree system, although the method is slightly different; the trees left will be selected by size, rather than by location.

The point of leaving residual trees is to provide a good seed source for forest regeneration and cover for wildlife. Each harvest unit is less than 50 acres in size as recommended within the *SFG,* trees adjacent to each unit will provide abundant seeds to the harvested areas.

2. Falling. Hand falling with chain saws and mechanical falling with feller bunchers will be used to harvest timber in each unit. Rubber tired and tracked grapple skidders, line skidders, delimbers, forwarders, and dozers will be employed to forward timber to landing areas for processing by a chipper.

3. Slash. Limbs and tops will be severed and scattered to decompose in the unit. If burning is utilized to dispose of slash, an open-burning permit may be required from DEC, and that is the responsibility of the logger. Some burning may be proposed for slash disposal by the purchaser in the operating plan. No large scale burning of brush piles will be required or allowed within the timber sale contract.

4. Hours of operation. Due to the remote location of this timber sale, no limits will be placed on the hours of operation for harvesting, skidding or hauling activities. Hauling activities outlined in the Transportation section below will be controlled by the State through the timber sale contract. The State will base approval of the hauling schedule on the traffic activity encountered on the Sunset and Sunrise Roads during the operational periods proposed by the purchaser.

5. Invasive species. Because of the potential of heavy timber harvest equipment to spread invasive plant species' seeds, the contract will require that before timber harvesting equipment enters the harvest area, it will be power-washed to remove possible invasive plant species seeds. This guideline applies to timber harvest equipment, not trucks hauling logs and or other forest products.

Scarification equipment will be contractually required to have been power-washed before coming on-site. Although the closest unit to a major road is a little more than 0.25 miles away, there is little danger that invasive seed from the Sunrise Road will be blown into the scarified areas due to the retained forest vegetation remaining between the unit and the road.

K. Transportation

The main access route to this timber sale area is via Church Road for approximately 4.0 miles north from the Parks Highway, then west over the Little Susitna River on Shrock Road for about 1 mile, then west on Sunrise Road for 2.5 miles, then north on the Sunset Road to the intersection with a section line road. From this intersection, proceed north 0.25 miles to intersect with a short spur road which goes west into the section. A winter road, at this point, is necessary to access the sale.

The DOF will limit hours of trucking to avoid times when school buses are present on the Sunrise and Sunset Roads. The timber sale contract will specifically stipulate that operations will take school bus traffic into account and limit log & firewood truck traffic to times that buses do not travel these secondary roads. Signs will also be posted on the road during the duration of the timber sale to advise the public of the added traffic on the road.

Construction of approximately 0.85 miles of secondary winter/skid roads will be necessary to access this timber sale. Access to the proposed harvest units will require any new stream crossings. The purchaser will be responsible for entering into road use agreements as necessary to maintain existing road conditions and adequately manage the increased traffic caused by timber operations.

The Purchaser will follow the Mat-Su Borough Trucking Regulations as part of the Timber Sale Contract.

The area proposed for timber harvest is already used by off-road vehicles (ORVs), as evidenced by the many trails throughout the sale area. The people using the area for ORVs generally park in the landing area at the intersection of the Sunset Road and the section line easement road and access the area using the section line road, and through the wetlands, even in non-winter months. Using ORVs on state land does not require a permit; it is a generally allowed use, as long as the vehicles do not break through the vegetated matt.

L. Erosion

There are two types of soil erosion concerns: surface erosion and mass wasting of soil and debris. Road construction and poor maintenance of roads primarily causes surface erosion. No roads, other than winter roads, have been designated for this area. Although some soil disturbance is possible with the construction of winter roads, this disturbance should be minimal.

The Alaska Resources and Practices Regulations slope stability standards and its ground skidding BMPs will be adhered to at all times, as will the BMPs for all-weather and winter road construction. The FRPA will be implemented to protect the current hydrologic pattern. This will include, but not be limited to, vegetative or other stabilization of exposed soils, proper road maintenance and road closure at the end of the season. DOF's timber sale forester will ensure, with frequent field inspections, compliance with the timber sale contract and the FRPA. Proper road maintenance on active, inactive, and closed roads will be followed.

The other aspect of erosion (mass wasting and debris avalanches) normally occurs on slopes of more than 70 percent. The DOF has determined that the mass wasting potential is nonexistent because slopes are generally mild and timber harvest areas are not on slopes greater than 67 percent. Harvesting will be suspended during periods of thawing soil conditions to assure there is minimal soil disturbance.

M. Mining

There is little (no) known current mining activity in this area. Other than providing access and sharing some of the same access roads, this sale will have no impact on the potential mining resources or mining activity in this area.

N. Materials

Water may potentially be required for surfacing of winter roads. The purchaser will be required to obtain any necessary permits to withdraw water from stream sources on the way to the sale area if that is considered an operational necessity during the preoperational meeting or during timber sale administration. The quantity required is not anticipated to be significant.

O. Economics

In addition to generating royalties to the state's general fund, the proposed sale will create economic benefits to the Matanuska-Susitna Borough and to other locations in Alaska. The borough business community will receive direct economic benefits from providing support services for the operators through sales of fuel, food, housing, medical and miscellaneous supplies. The residents of the borough will receive an indirect benefit through property taxes paid to the borough by the operator and employees during the course of the timber harvest operation.

The sale is expected to benefit the local economy by providing jobs. This timber sale will have a positive impact on statewide employment by generating several thousand man-hours of work directly associated with the harvest and wood processing operations in this timber sale.

Additional impacts could be creating additional access for the public and providing moose browse and diverse wildlife habitat for increased subsistence and hunting opportunities that would attract people to the local communities where they would purchase goods and services.

IV. MARKET CONDITIONS

To help stabilize the local wood products industry, the DOF has been directed by the Governor and Legislature to make a consistent and sustainable timber supply available to the markets. The continued interest in Alaska birch chips by Asian companies and in bio-fuels has the potential to provide opportunities to new and existing businesses. The deep-water port at Point Mackenzie provides a shipping facility with the equipment to directly load wood chips or other products onto ships for shipment to markets in the lower 48 or to Asia.

The increase in oil prices during the last few years has created interest in alternative fuels including the increased demand for wood based fuels. Pellet stoves are being sold all over Alaska and are currently using pellets manufactured outside. Two firms in the interior are setting up pellet mills and plan on producing pellets in the near future to meet this demand while efficient wood chip fired boilers are planned for heating schools and other public buildings in Tok, Delta, and Talkeetna. Commercial suppliers are ramping up operations to meet current demand for firewood. This demand is expected to increase if more people and organizations move away from conventional oil based fuels and towards sustainable bio-fuels.

This increased demand for lower quality wood should have a positive impact on the ability of local mills to economically access higher quality timber they require to meet local manufacturing and raw lumber demands. The purchaser of a timber sale can sort higher quality logs coming to a landing, sell the saw logs to local mills and process the remainder for firewood, chips, or other wood products.

Small sales prepared in the last two years have all been sold to small operators. Operators have voiced significant interest in purchasing sales of this size or larger to help meet the growing demand for firewood.

Upon final decision of the director, the proposed sale(s) will be publicly advertised for sale as one sale or as several smaller sales according to the provisions of AS 38.05.120 ([Competitive] Disposal Procedure). If no qualified bid is received within the time specified for the sale, the Division of Forestry may offer the sales for purchase over-the-counter for not less than the appraised and advertised minimum bid without further public notice.

V. ALTERNATIVE ACTIONS

There are four possible alternatives to consider for this sale. A discussion of each of the four alternatives follows:

1. To continue the sale(s) as proposed. This alternative meets the objectives of the Five-Year Schedule of Timber Sales and one of DNR's mandates to make the state's renewable resources available for public use. It also meets the silvicultural objective of improving forest vigor, provides for a secure source of timber for the industry and creates additional jobs in Alaska due to the combination of road building, logging, and trucking. This alternative also complies with the management intent of the *Deception Creek Land Use Plan*, which is to retain the area in public ownership and manage it for multiple use, primarily forestry and wildlife habitat.

2. To modify the sale(s) by making them smaller or larger. This plan consists of two units. The size of the typical unit is designed to be large enough to be economically viable for mechanical logging methods. Increasing the unit size would not be adhering to the *SFG*. Decreasing the size of the units would increase logging costs or leave timber that would be more difficult to harvest in the future. This sale is appropriately balanced to maintain other resource values as well as provide economic benefits to the Mat-Su Valley.

3. Defer the sale of this timber to a later date. Deferring harvest to a later date would fail to meet many of the objectives of the sale program. One of the main objectives is to try and make state-owned timber consistently available to the timber industry. This timber sale has been specifically requested in this area.

4. Not offer this timber for sale. This alternative would result in not meeting any of the objectives outlined for this management action. Utilization of the forest resource would not be achieved. There would be no significant contribution to the state and local economies. This alternative would delay the management objectives planned for the area, would deny making a source of raw materials available to the local wood products industry, and would delay the harvest of dead trees, mature trees, disease infected trees, and trees at risk to insect infestation. Decay in infected and infested mature spruce and birch trees results in loss of economic value.

VI. ACMP CONSISTENCY ANALYSIS

This area is not within the Matanuska-Susitna Borough's District Coastal Management Plan and therefore a consistency review is not required.

VII. PRELIMINARY FINDING AND DECISION

The purpose of this decision is to determine if the Department of Natural Resources, Division of Forestry, will make available timber located in Section 10, T18N, R2W in the Seward Meridian.

After due consideration of all pertinent information and alternatives, I have reached the following Preliminary Decision: **To offer the sale as proposed.**

In addition, I find that this preliminary decision satisfies the objectives as stated in this document and that it is in the best interest of the state to proceed with this action.

_____ _____

Ken Bullman
Mat-Su Area Forester

Date

Abbreviations

ADFG: Alaska Department of Fish and Game
BMPs: Best Management Practices
DBH: diameter at breast height
DPOR: Division of Parks and Outdoor Recreation
DEC: Department of Environmental Conservation
DNR: Department of Natural Resources
DOF: Division of Forestry
FF: Final Finding (Forest Land Use Plan)
FLUP: Forest Land Use Plan
FRPA: Alaska Forest Resources and Practices Act
FYSTS: Five Year Schedule of Timber Sales
DOH: Division of Habitat
ORV: off-road vehicle
PD: Preliminary Decision (Forest Land Use Plan)
SHPO: State Historic Preservation Office
SFG: Susitna Forestry Guidelines

Works Cited

Collins, William B., 1996. *Wildlife Habitat Enhancement in the Spruce-Hardwood Forest of the Matanuska and Susitna River Valleys*. Alaska Department of Fish and Game, Wildlife Conservation, Juneau, AK.

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Zasada, John C., and David Grigal. 1978. *The effects of silvicultural system and seedbed preparation on natural regeneration of white spruce and associated species in Interior Alaska. In* Proceedings, Fifth North American Forest Biology Workshop. p. 213-220. C. A. Hollis, and A. E. Squillace, eds. University of Florida, School of Forest Resources, Gainesville.

Links to Planning Documents:

Willow Sub-Basin Area Plan: http://www.dnr.state.ak.us/mlw/planning/areaplans/willow/index.cfm

Deception Creek Land Use Plan: www.dnr.state.ak.us/mlw/planning/mgtplans/deception/index.htm

Susitna Forestry Guidelines:
http://www.dnr.state.ak.us/mlw/planning/mgtplans/susitna_forestry_guidelines/index.htm

TITLE 11. NATURAL RESOURCES.

CHAPTER 02. APPEALS.

11 AAC 02.010. APPLICABILITY AND ELIGIBILITY. (a) This chapter sets out the administrative review procedure available to a person affected by a decision of the department. If a statute or a provision of this title prescribes a different procedure with respect to a particular decision, that procedure must be followed when it conflicts with this chapter.

(b) Unless a statute does not permit an appeal, an applicant is eligible to appeal or request reconsideration of the department's decision on the application. An applicant is eligible to participate in any appeal or request for reconsideration filed by any other eligible party.

(c) If a statute restricts eligibility to appeal or request reconsideration of a decision to those who have provided timely written comment or public hearing testimony on the decision, the department will give notice of that eligibility restriction as part of its public notice announcing the opportunity to comment.

(d) If the department gives public notice and allows a public comment period of at least 30 days on a proposed action, and if no statute requires opportunity for public comment, the department may restrict eligibility to appeal or request reconsideration to those who have provided timely written comment or public hearing testimony on the proposed action by including notice of the restriction as part of its public notice announcing the opportunity to comment.

(e) An eligible person affected by a decision of the department that the commissioner did not sign or cosign may appeal the decision to the commissioner within the period set by 11 AAC 02.040.

(f) An eligible person affected by a decision of the department that the commissioner signed or cosigned may request the commissioner's reconsideration within the period set by 11 AAC 02.040.

(g) A person may not both appeal and request reconsideration of a decision. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:	AS 03.05.010	AS 38.04.900	AS 38.08.110	AS 41.15.020	AS 44.37.011
	AS 29.65.050	AS 38.05.020	AS 38.09.110	AS 41.17.055	AS 46.15.020
	AS 29.65.120	AS 38.05.035	AS 38.50.160	AS 41.21.020	AS 46.17.030

11 AAC 02.015. COMBINED DECISIONS. (a) When the department issues a combined decision that is both a final disposal decision under AS 38.05.035(e) and any other decision, including a disposal decision combined with a land use plan decision, or a disposal decision to grant certain applications combined with a decision to deny others, the appeal process set out for a disposal decision in AS 38.05.035(i) - (m) and this chapter applies to the combined decision.

(b) A decision of the department may include a statement that a final consistency determination under AS 46.40 (Alaska Coastal Management Program) has been rendered in conjunction with the decision. A person may not, under this chapter, appeal or request reconsideration of the final consistency determination, including a requirement necessary solely to ensure the activity is consistent with the Alaska coastal management program as approved under AS 46.40. (Eff. 9/19/2001, Register 159)

Authority: AS 29.65.050 AS 38.04.900 AS 38.05.035 AS 38.09.110
AS 29.65.120 AS 38.05.020 AS 38.08.110 AS 38.50.160

11 AAC 02.020. FINALITY OF A DECISION FOR PURPOSES OF APPEAL TO COURT. (a) Unless otherwise provided in a statute or a provision of this title, an eligible person must first either appeal or request reconsideration of a decision in accordance with this chapter before appealing a decision to superior court.

(b) The commissioner's decision on appeal is the final administrative order and decision of the department for purposes of appeal to the superior court.

(c) The commissioner may order or deny a request for reconsideration within 30 calendar days after issuance of the decision, as determined under 11 AAC 02.040(c)-(e). If the commissioner takes no action during the 30-day period, the request for reconsideration is considered denied. Denial of a request for reconsideration is the final administrative order and decision of the department for purposes of appeal to the superior court.

(d) If the commissioner timely orders reconsideration of the decision, the commissioner may affirm the decision, issue a new or modified decision, or remand the matter to the director for further proceedings. The commissioner's decision, other than a remand decision, is the final administrative order and decision of the department for purposes of appeal to the superior court. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority: AS 03.05.010 AS 38.04.900 AS 38.08.110 AS 41.15.020 AS 44.37.011
AS 29.65.050 AS 38.05.020 AS 38.09.110 AS 41.17.055 AS 46.15.020
AS 29.65.120 AS 38.05.035 AS 38.50.160 AS 41.21.020 AS 46.17.030

11 AAC 02.030. FILING AN APPEAL OR REQUEST FOR RECONSIDERATION. (a) An appeal or request for reconsideration under this chapter must

(1) be in writing;

(2) be filed by personal service, mail, fax, or electronic mail;

(3) be signed by the appellant or the appellant's attorney, unless filed by electronic mail; an appeal or request for reconsideration filed by electronic mail must state the name of the person appealing or requesting reconsideration and a single point of contact to which any notice or decision concerning the appeal or request for reconsideration is to be sent;

(4) be correctly addressed;

(5) be timely filed in accordance with 11 AAC 02.040;

(6) specify the case reference number used by the department, if any;

(7) specify the decision being appealed or for which reconsideration is being requested;

(8) specify the basis upon which the decision is challenged;

(9) specify any material facts disputed by the appellant;

(10) specify the remedy requested by the appellant;

(11) state the address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed; an appellant may also provide a telephone number where the appellant can be reached during the day or an electronic mail address; an appeal or request for reconsideration filed electronically must state a single address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed;

(12) identify any other affected agreement, contract, lease, permit, or application by case reference number, if any; and

(13) include a request for an oral hearing, if desired; in the appeal or request for reconsideration, the appellant may include a request for any special procedures to be used at the hearing; the appeal or request for reconsideration must describe the factual issues to be considered at the hearing.

(b) At the time an appeal is filed, and up until the deadline set out in 11 AAC 02.040(a) to file the appeal, an appellant may submit additional written material in support of the appeal, including evidence or legal argument.

(c) If public notice announcing a comment period of at least 30 days was given before the decision, an appellant may not submit additional written material after the deadline for filing the appeal, unless the appeal meets the requirement of (a) of this section and includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

(1) comments already received from the appellant and others;

(2) whether the additional material is likely to affect the outcome of the appeal;

(3) whether the additional material could reasonably have been submitted without an extension;

(4) the length of the extension requested;

(5) the potential effect of delay if an extension is granted.

(d) If public notice announcing a comment period of at least 30 days was not given before the decision, an appellant may submit additional written material after the deadline for filing the appeal, if the appeal meets the requirements of (a) of this section and includes a notice of intent to file the additional written material. The department must receive the additional written material within 20 days after the deadline for filing the appeal, unless the appeal also includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

(1) comments already received from the appellant and others;

(2) whether the additional material is likely to affect the outcome of the appeal;

(3) whether the additional material could reasonably have been submitted without an extension;

(4) the length of the extension requested;

(5) the potential effect of delay if an extension is granted.

(e) At the time a request for reconsideration is filed, and up until the deadline to file a request for reconsideration, an appellant may submit additional written material in support of the request for reconsideration, including evidence or legal argument. No additional written material may be submitted after the deadline for filing the request for reconsideration.

(f) If the decision is one described in 11 AAC 02.060(c), an appellant who believes a stay of the decision is justified may ask for a stay as part of the appeal or request for reconsideration. The appellant must include an argument as to why the public interest requires a stay. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:	AS 03.05.010	AS 38.04.900	AS 38.08.110	AS 41.15.020	AS 44.37.011
	AS 29.65.050	AS 38.05.020	AS 38.09.110	AS 41.17.055	AS 46.15.020
	AS 29.65.120	AS 38.05.035	AS 38.50.160	AS 41.21.020	AS 46.17.030

Editor's note: The address for an appeal or request for reconsideration by personal service and by mail is: Department of Natural Resources, Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3561. The number for an appeal or request for reconsideration by fax is: 1-907-269-8918. The electronic mailing address for an appeal or request for reconsideration by electronic mail is: dnr_appeals@dnr.state.ak.us

11 AAC 02.040. TIMELY FILING; ISSUANCE OF DECISION. (a) To be timely filed, an appeal or request for reconsideration must be received by the commissioner's office within 20 calendar days after issuance of the decision, as determined under (c) or (d) of this section, unless another period is set by statute, regulation, or existing contract. If the 20th day falls on a day when the department is officially closed, the appeal or request for reconsideration must be filed by the next working day.

(b) An appeal or request for reconsideration will not be accepted if it is not timely filed.

(c) If the appellant is a person to whom the department delivers a decision by personal service or by certified mail, return receipt requested, issuance occurs when the addressee or the addressee's agent signs for the decision. If the addressee or the addressee's agent neglects or refuses to sign for the certified mail, or if the address that the addressee provided to the department is not correct, issuance by certified mail occurs when the decision is deposited in a United States general or branch post office, enclosed in a postage-paid wrapper or envelope, addressed to the person's current address of record with the department, or to the address specified by the appellant under 11 AAC 02.030(a)(11).

(d) If the appellant is a person to whom the department did not deliver a decision by personal service or certified mail, issuance occurs

(1) when the department gives public notice of the decision; or

(2) if no public notice is given, when the decision is signed; however, the department may state in the decision a later date of issuance and the corresponding due date for any appeal or request for reconsideration.

(e) The date of issuance constitutes delivery or mailing for purposes of a reconsideration request under AS 44.37.011(d) or AS 44.62.540(a). (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:	AS 03.05.010	AS 38.04.900	AS 38.08.110	AS 41.15.020	AS 44.37.011
	AS 29.65.050	AS 38.05.020	AS 38.09.110	AS 41.17.055	AS 46.15.020
	AS 29.65.120	AS 38.05.035	AS 38.50.160	AS 41.21.020	AS 46.17.030

11 AAC 02.050. HEARINGS. (a) The department will, in its discretion, hold a hearing when questions of fact must be resolved.

(b) The hearing procedure will be determined by the department on a case-by-case basis. As provided in 11 AAC 02.030(a)(13), any request for special procedures must be included with the request for a hearing.

(c) In a hearing held under this section

(1) formal rules of evidence need not apply; and

(2) the hearing will be recorded, and may be transcribed at the request and expense of the party requesting the transcript. (Eff. 11/7/90, Register 116)

Authority:	AS 03.05.010	AS 38.04.900	AS 38.09.110	AS 41.17.055	AS 46.17.030
	AS 29.65.050	AS 38.05.020	AS 38.50.160	AS 41.21.020	
	AS 29.65.120	AS 38.08.110	AS 41.15.020	AS 46.15.020	

11 AAC 02.060. STAYS; EXCEPTIONS. (a) Except as provided in (c) and (d) of this section, timely appealing or requesting reconsideration of a decision in accordance with this chapter stays the decision during the commissioner's consideration of the appeal or request for reconsideration. If the commissioner determines that the public interest requires removal of the stay, the commissioner will remove the stay and allow all or part of the decision to take effect on the date set in the decision or a date set by the commissioner.

(b) Repealed 9/19/2001.

(c) Unless otherwise provided, in a statute or a provision of this title, a decision takes effect immediately if it is a decision to

(1) issue a permit, that is revocable at will;

(2) approve surface operations for a disposal that has already occurred or a property right that has already vested; or

(3) administer an issued oil and gas lease or license, or an oil and gas unit agreement.

(d) Timely appealing or requesting reconsideration of a decision described in (c) of this section does not automatically stay the decision. However, the commissioner will impose a stay, on the commissioner's own motion or at the request of an appellant, if the commissioner determines that the public interest requires it.

(e) A decision takes effect immediately if no party is eligible to appeal or request reconsideration and the commissioner waives the commissioner's right to review or reconsider the decision. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:	AS 03.05.010	AS 38.04.900	AS 38.08.110	AS 41.15.020	AS 46.15.020
	AS 29.65.050	AS 38.05.020	AS 38.09.110	AS 41.17.055	AS 46.17.030
	AS 29.65.120	AS 38.05.035	AS 38.50.160	AS 41.21.020	

11 AAC 02.070. WAIVER OF PROCEDURAL VIOLATIONS. The commissioner may, to the extent allowed by applicable law, waive a requirement of this chapter if the public interest or the interests of justice so require. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:	AS 03.05.010	AS 29.65.120	AS 38.05.035	AS 38.50.160	AS 41.21.020
	AS 03.10.020	AS 38.04.900	AS 38.08.110	AS 41.15.020	AS 46.15.020
	AS 29.65.050	AS 38.05.020	AS 38.09.110	AS 41.17.055	AS 46.17.030

11 AAC 02.080. DEFINITIONS. Repealed. (Eff. 11/7/90, Register 116; repealed 9/19/2001, Register 159)

Editor's note: The subject matter formerly set out at 11 AAC 02.080 has been moved to 11 AAC 02.900.

11 AAC 02.900. DEFINITIONS. In this chapter,

(1) "appeal" means a request to the commissioner to review a decision that the commissioner did not sign or cosign;

(2) "appellant" means a person who files an appeal or a request for reconsideration.

(3) "commissioner" means the commissioner of natural resources;

(4) "decision" means a written discretionary or factual determination by the department specifying the details of the action to be allowed or taken;

(5) "department" means, depending of the particular context in which the term is used, the Department of Natural Resources, the commissioner, the director of a division within the Department of Natural Resources, or an authorized employee of the Department of Natural Resources;

(6) "request for reconsideration" means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:	AS 03.05.010	AS 38.05.020	AS 38.09.110	AS 41.17.055	AS 44.62.540
	AS 29.65.050	AS 38.05.035	AS 38.50.160	AS 41.21.020	AS 46.15.020
	AS 29.65.120	AS 38.08.110	AS 41.15.020	AS 44.37.011	AS 46.17.030
	AS 38.04.900				

Editor's note: The subject matter of 11 AAC 02.900 was formerly located at 11 AAC 02.080. The history note for 11 AAC 02.900 does not reflect the history of the earlier section.

Vicinity Map

Sale Map